No. _____

# In The
# Supreme Court of the United States

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MIGUEL ALCANTAR,

Petitioner,

v.

STATE OF ILLINOIS,

Respondent.

_____ ∆ _____

**Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, First District, First Division**

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## PETITION FOR WRIT OF CERTIORARI

_____ ∆ _____

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## QUESTION PRESENTED FOR REVIEW:

Whether the Compulsory Process Clause of the Sixth Amendment guarantees to a criminal defendant the right to issue subpoenas duces tecum to private, third parties for the pretrial production of relevant documentary evidence?

## TABLE OF CONTENTS

## APPENDIX



## TABLE OF AUTHORITIES

*Supreme Court Cases*

**Other Federal Cases**



**State Cases**

***Rules***

## OPINION BELOW

The opinion of the Appellate Court of Illinois, First District, First Division affirming Miguel Alcantar's convictions is *People v. Alcantar*, 2018 IL App (1st) 162771.

## JURISDICTION

The Appellate Court of Illinois, First District, First Division entered its opinion on October 29, 2018. The Supreme Court of Illinois denied the petition for leave to appeal on January 31, 2019. A motion for an extension of time to and including May 31, 2019 has been granted by a Justice of this Court. This Court has jurisdiction under 28 U.S.C. Sec. 1257.

## STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, amend. XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, with-out due process of law; nor deny to any per-son within its jurisdiction the equal protection of the laws.

United States Constitution, amend. VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district

> wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

## STATEMENT OF THE CASE

Petitioner, Miguel Alcantar was convicted after a jury trial of the aggravated criminal sexual assault of J.A., who at the time of the alleged assault was five years old. He was sentenced to a total of 18 years in the penitentiary.

On January 20, 2016, petitioner moved to issue a subpoena duces tecum for the medical records of N.A., J.A.'s sister, and also for the disclosure of those records as exculpatory material under *Brady v. Maryland*, 373 U.S. 83 (1963). (RC Vol. II, 482-84). The trial court denied this motion. (R. Vol. I, 80).

Rosalba Nunez, the mother of N.A. and J.A. told one of the detectives in April of 2014, nineteen months after the alleged assault of J.A., that J.A. told her that "Miguel Alcantar came into a bedroom and 'daddy did it to her and then to [N.A.] *** daddy got close to [N.A.] and then put her finger in her private part (vagina) and then , got on top of [N.A.] and put his private (penis) in [N.A.]'s private part (vagina) and that she/mom was sound asleep when daddy did that and when she/mom moved then daddy got up and left." (RC Vol. II, 483). Following Nunez's report, N.A. was given a medical exam. (RC Vol. II, 482-83). J.A. was five years old at the time of the molestation. N.A. was under one year old. (R. Vol. I, 73).

Further, according to the motion and counsel's argument, the defense was not provided any information as to N.A.'s statements until September of 2015 (R. Vol. I, 79-80), although the state was in possession of the April 2014 statements and N.A.'s medical records in April of 2014. (RC Vol. II, 483). Hearings to determine the reliability of J.A.'s statements under 725 ILCS 15-10 had been held in June and August of 2014. (RC Vol. II, 482-83).

The defense argued that the statements were relevant because they bore upon the reliability of J.A.' s 115-10 statements and because the physical evidence from N.A.'s medical examination would either refute or corroborate J.A.'s claim that Miguel Alcantar had penetrated N.A. at the same time he also had allegedly molested J.A. (RC Vol. II, 483-44). In addition, the defense argued that the report of N.A.'s medical examination would contain statements of J.A. that might contradict the statements she had made in the past. (RC Vol. II, 73-74).

In ruling on the motion, the trial judge indicated: (1) He was not going to revisit the ruling of the previous judge on the 115-10 hearing (R. Vol. I, 71), (2) the claim that Alcantar molested N.A. was not "part of the case" against J.A. (R. Vol. I, 74-75), and (3) the case was four years old and the judge was not going to "spend time waiting for these medical records to be generated at this very, very, very late date when the request for these medical records is based on *** speculation, pure speculation." (R. Vol. I, 75).

On appeal, the Illinois appellate court agreed that the trial court properly refused permission to issue the subpoena for N.A.'s medical records because the medical records "had no relevance to the charges against defendant involving J.A." (A-11-12, A-12).

## REASON FOR GRANTING THE PETITION

THIS COURT SHOULD GRANT THE PETITION TO DETERMINE WHETHER THE SIXTH AMENDMENT GUARANTEE OF COMPULSORY PROCESS REQUIRES A COURT TO AT LEAST ALLOW A CRIMINAL DEFENDANT TO SUBPOENA POTENTIALLY EXCULPATORY MATERIAL FROM A THIRD PARTY AND TO REVIEW SUCH MATERIAL IN CAMERA

Miguel Alcantar's petition for certiorari should be granted, for three separate reasons.

First, Miguel Alcantar's petition raises an "important question of federal law that has not been, but should be, settled by this Court," United States Supreme Court Rule 10 (c): whether the Compulsory Process Clause of the Sixth Amendment guarantees to a criminal defendant the right to issue and enforce pretrial subpoenas duces tecum to third parties for relevant, and possibly, exculpatory evidence. This is a question which was specifically left open by this Court
in *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987).

Second, this a question upon which there is longstanding and deepening split, both among the highest courts of the States and among the federal circuits. The case is of national importance, affecting practice in every jurisdiction and nearly every criminal case.

Third, Miguel Alcantar's case presents an excellent vehicle for resolution of this question, because the court below refused to even allow the issuance of subpoenas or conduct an in camera inspection despite a substantial showing of relevance.

The text of the Sixth Amendment provides: that every defendant is to have "compulsory process for obtaining witnesses in his favor." This right applies

to the States through the Due Process Clause of the Fourteenth Amendment. *Washington v. Texas*, 388 U.S. 14, 18 (1967). However, as this Court noted in *Ritchie*, the Court "has had little occasion to discuss the contours of the Compulsory Process Clause." 480 U.S. at 55.

Despite the lack of "discussion," many re-*Ritchie* cases held that the right to "compulsory process" to obtain favorable "witnesses" included a right to issue subpoenas duces tecum for the disclosure of possibly relevant documentary material prior to trial, particularly from third parties not bound by other rules or constitutional obligations.

In the most famous early example, the treason trial of former Vice President Aaron Burr, Chief Justice Marshall, as circuit justice, ruled that a letter in the custody of President Thomas Jefferson must be produced for the defendant's inspection under the Compulsory Process Clause. *United States v. Burr*, 25 F.Cas. 30, 33 (C.C.Va.1807) (No. 14,692d) This historical ruling was given great weight in United *States v. Schneiderman*, 106 F.Supp. 731 (S.D.Cal.1952), which discussed the clause at length and concluded that it required the production of investigative reports of government witnesses for use by a defendant in a Smith Act prosecution. This case was cited with approval in *Jencks v. United States*, 353 U.S. 657, 668 n. 13 (1957). The proposition that the Compulsory Process Clause requires prior statements of witnesses to be produced was also noted by Justice Brennan, concurring in *Palermo v. United States*, 360 U.S. 343, 362 (1959) (Brennan, J., concurring), and was one basis for upholding a subpoena duces tecum directed at President Richard Nixon for production of tapes and documents prior to trial (and, indeed, prior to indictment). *United States v. Nixon*, 418 U.S. 683 (1974).

In *Ritchie*, however, this Court shifted gears, avoiding the question of whether the Compulsory Process Clause requires compulsory production of documents prior to trial. *Ritchie* involved the production of a file of the Pennsylvania Children and Youth Services which allegedly contained exculpatory material, and which the trial judge had refused to examine *in camera*. 480 U.S. at 44.

After discussing *Burr* and *Nixon*, the court held that *in camera* review was mandated by the Due Process clause of the Fourteenth, and not by Compulsory Process Clause of the Sixth Amendment:

"This Court has never squarely held that the Compulsory Process Clause guarantees the right to discover the *identity* of witnesses, or to require the government to produce exculpatory evidence. But cf. *United States v. Nixon,* 418 U.S. 683, 709, 711, 94 S.Ct. 3090, 3108, 3109, 41 L.Ed.2d 1039 (1974) (suggesting that the Clause may require the production of evidence). Instead, the Court traditionally has evaluated claims such as those raised by *Ritchie* under the broader protections of the Due Process Clause of the Fourteenth Amendment. See *United States v. Bagley,* 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985); *Brady v. Maryland,* 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). See also *Wardius v. Oregon,* 412 U.S. 470, 93 S.Ct. 2208, 37 L.Ed.2d 82 (1973). Because the applicability of the Sixth Amendment to this type of case is unsettled, and because our Fourteenth Amendment precedents addressing the fundamental fairness of trials establish a clear framework for review, we adopt a due process analysis for purposes of this case. Although we conclude that compulsory process provides no *greater* protections in this area than those afforded by due process, we need not decide today whether and how the guarantees of the

Compulsory Process Clause differ from those of the Fourteenth Amendment. It is enough to conclude that on these facts, Ritchie's claims more properly are considered by reference to dueprocess."

*Ritchie*, 480 U.S. at 56.

Because *Ritchie* involved material in the "possession" of the government, 480 U.S. at 57, traditional due process principles mandated in camera review and possible disclosure, despite the fact that the relevance of the file's contents was not known. 480 U.S. at 58.

*Ritchie* therefore explicitly leaves open the question of whether a criminal defendant has the right to obtain disclosure of documentary information possessed, not by the government, but by third parties. Such information may be equally critical to the defense. But the question of documents in private hands cannot be answered by reference to the Due Process Clause, which, by definition, applies only to government agencies, not private actors. See *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999).

This question is squarely posed here, because, at least so far as the record shows, the hospital records at issue were not in possession of the state prosecutors. Therefore, this Court should grant the petition to resolve the issue left open by *Ritchie*.

Moreover, since *Ritchie*, the lower courts have been deeply divided as to whether the Compulsory Process Clause mandates compelled production of documents prior to trial. Compare *People v. Baltazar*, 241 P.3d 941, 944 (Colo. 2010)(Compulsory Process Clause guarantees right to secure witnesses and evidence for in-court presentation, not to issue ex parte subpoenas duces tecum for documents or information prior to trial), *Facebook, Inc. v. Superior*

*Court,* 240 Cal. App. 4th 203, 192 Cal. Rptr. 3d 443, 454 (2015), *review granted and opinion superseded sub nom. Facebook v. S.C.,* 362 P.3d 430 (Cal. 2015), and *vacated*, 4 Cal. 5th 1245, 417 P.3d 725 (2018)(trial court's refusal to quash subpoenas for Facebook records was not justified based upon Compulsory Process Clause); *Cf. State v. McLaughlin*, 514 A.2d 1139, 1141 (Del. Super. Ct. 1986)(Compulsory Process Clause does not provide right to compel testimony of unretained expert witness), *State v. Cartwright*, 336 Or. 408, 416, 85 P.3d 305, 310 (2004)(Compulsory Process Clause did not require pretrial production of audiotapes of eyewitnesses), *Hathaway v. State*, 2017 WY 92, ¶ 55, 399 P.3d 625, 640 (Wyo. 2017)(Compulsory Process Clause did justify in camera review of DCFS records where defense had "hunch" that records contained exculpatory evidence) *with State v. DeCaro*, 252 Conn. 229, 258, 745 A.2d 800, 818 (2000)(trial court may have violated defendant's right to compulsory process by quashing subpoena for documents, and remanding for development of full factual record), *State v. Tetu*, 139 Hawai'i 207, 214, 386 P.3d 844, 851 (2016)(recognizing constitutional right to access crime scene located on private property), *overruling Honolulu Police Dept. v. Town*, 122 Hawai'i 204, 214, 225 P.3d 646, 656 (2010)(the right to compel the production of documents by subpoena is not a right to obtain discovery), *People v. Swygert*, 57 Misc. 3d 913, 923, 61 N.Y.S.3d 870, 878 (N.Y.Crim.Ct. 017)(defense had right under the Compulsory Process Clause to subpoena surveillance tapes which constituted "non-privileged, material and necessary evidence"), *Love v. Johnson*, 57 F.3d 1305, 1312 (4th Cir. 1995)(state court violated both due process clause and the Compulsory Process Clause of the Sixth Amendment by quashing subpoenas without conducting an in camera inspection), *Braham v. State*, 571 P.2d 631,

644 (Alaska 1977)(Compulsory Process Clause requires pretrial production of prior statements of witnesses).

This Court should therefore grant the petition to resolve the conflict and resolve, once and for all, the question of whether the Compulsory Process Clause mandates the compelled production of relevant documents held by private persons.

Lastly, this case is the perfect vehicle to resolve this question. Here, as in *Ritchie* the documents related to the critical issue in the case, whether Miguel Alcantar had molested J.A., because it was likely, if not sure beyond doubt, that J.A. had discussed her own case with medical personnel when she disclosed the simultaneous alleged assault on N.A. Moreover, it was very probable that N.A.'s physical examination, if normal, would impact J.A.'s claim that Miguel Alcantar had inserted his penis into N.A.'s vagina at the age of five months. With a child of five months of age, if N.A. had an intact hymen 19 months later, it is very unlikely that J.A.'s bizarre claim was actually true.

Moreover, here, as in *Ritchie*, no *in camera* inspection was ever conducted --- in this case the trial judge refused to allow the issuance of a subpoena and the records were never produced, let alone inspected.

Therefore, this Court should grant the petition for writ of certiorari.

## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

MIGUEL ALCANTAR

Dated: 6/11/2019

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# APPENDIX

**APPENDIX A**

IN THE SUPREME COURT OF ILLINOIS

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No. 124280

PEOPLE OF THE STATE OF ILLINOIS,
RESPONDENT
v.

MIGUEL ALCANTAR, PETITIONER

[January 31, 2019]

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Leave to appeal, Appellate Court, First District, 1-16-2771

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Petition for Leave to Appeal Denied.

APPENDIX B

IN THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FIRST DIVISION

No. 1-16-2771

PEOPLE OF THE STATE OF ILLINOIS,
PLAINTIFF-APPELLEE
v.
MIGUEL ALCANTAR, DEFENDANT-APPELLANT

[October 29, 2018]

OPINION

JUSTICE WALKER delivered the judgment of the court.
Justice Pierce and Justice Griffin concurred in the judgment.
ORDER

1 *Held*: The evidence was sufficient to prove defendant guilty of predatory criminal sexual assault of a child and aggravated criminal sexual abuse beyond a reasonable doubt because the evidence presented was not so unreasonable; improbable, or unsatisfactory that no reasonable jury could find defendant guilty. The trial court did not abuse its discretion in denying defendant's request for leave to issue a subpoena *duces tecum* for medical records, in limiting defendant's expert testimony, or in denying the request for a new trial due to prosecutors

repeated improper questions to which the trial court sustained the objections.

2 Following a jury trial, defendant Miguel Alcantar (Alcantar) was convicted of predatory criminal sexual assault and aggravated criminal sexual abuse. The trial court sentenced Alcantar to 15 years in prison for predatory criminal sexual assault and to 3 years for aggravated criminal sexual abuse, with the sentences to run consecutively.

3 On appeal, Alcantar argues the evidence does not prove him guilty beyond a reasonable doubt, the trail court erred by denying his request to subpoena medical records, limiting evidence at trial, and refusing to grant a new trial.

4 BACKGROUND

5 A phone call on February 19, 2012, sent police to the home Alcantar shared with Rosalba Nunez (Nunez) and their children, 5-year-old J.A. and her younger sister N.A. Alcantar was not at home when police arrived. The officers took Nunez and J.A. to the Children's Advocacy Center (CAC) and to a hospital. Dr. Erika Castro (Castro) examined J.A., who told Castro that Alcantar touched her vaginal area and her nipples. Rebekah Stevenson (Stevenson) of CAC interviewed J.A. on February 20, 2012, and Stevenson recorded the interview.

6 A grand jury charged Alcantar with predatory criminal sexual assault and aggravated criminal sexual abuse.

7 Stevenson interviewed J.A. again two years later. In the second interview, unlike the first, J.A. said Alcantar molested both J.A. and N.A. in February 2012. Defense counsel asked the court to order the

production of N.A.'s medical records from an examination performed in 2014. The trial court denied the request.

8 Defense counsel sent J.A.'s medical records and the statements of J.A. and Nunez to Dr. David Levine. Dr. Levine wrote a report in which he said:

> "The history of the alleged assault is very inconsistent in the multiple reports by both the alleged victim, ***, and the mother *** [J.A.'s] report is very inconsistent especially between the initial report taken by Dr. Castro *** and the victim sensitive report on 2/20/12. The patient states the 2 alleged events happened on Monday and Wednesday in the report of Dr. Castro on 2/19 *** while the mother's reported the events were a week apart. [J.A.] varies the location of the alleged assaults. ***
>
> The patient is inconsistent with who was in the car when the second alleged incident occurred. ***
>
> The initial physical exam performed by first year Family Practice Resident Dr. Castro *** is difficult to interpret as non-standard, non-specific documentation is used. ***
>
> All labs including the state crime lab report are all normal. There was no semen identified on vaginal, oral, anal swabs, or underwear. There was no saliva identified on vaginal swabs or on miscellaneous breast swabs.

Conclusions:

In my expert medical opinion there is no evidence of a sexual assault."

9 The prosecution filed a motion to bar Dr. Levine from testifying. The trial court held Dr. Levine could testify that the medical reports do not constitute evidence of sexual abuse, but he could not testify regarding the inconsistencies in J.A.'s accounts, and he could not "testify that there was no evidence of sexual abuse."

10 At the trial, J.A. testified that when she was five, Alcantar touched her nipples and her vaginal area. At first, she said she did not remember which part of Alcantar's body touched her, but later she said he used his finger. She saw blood on his finger when he removed it from her vaginal area. Alcantar touched J.A.'s nipples with his mouth. J.A. remembered that after Alcantar touched her, she went to Nunez's room for Nunez to change her diaper. She told Nunez that Alcantar touched her. A few minutes later, she heard Nunez and Alcantar screaming. Alcantar said J.A. lied. Nunez wanted to take J.A. to a hospital, but Alcantar refused.

11 J.A. testified that on another day, she rode with Alcantar when Alcantar drove his friend Jorge Chavez (Chavez) home. They went to a park and J.A. swam. Chavez remained in the car. Alcantar fingered J.A.'s vaginal area and put his mouth on her nipples. When they returned home Nunez changed J.A.'s diaper. Nunez asked J.A. whether Alcantar touched her again. J.A. did not remember her answer, but she

remembered that police came to their home the following day.

12 Chavez testified he went to Alcantar's home on February 18, 2012. Alcantar drove Chavez home around 8 p.m., and J.A. rode in the car. Chavez did not go to any park with Alcantar and J.A., and he did not see Alcantar touch J.A. inappropriately.

13 Nunez testified about the incidents on February 12 and February 18. She said that on February 18, Alcantar left to drive Chavez home around 6 p.m., not 8 p.m. She let Alcantar take J.A. with him in the car because she feared Alcantar. He returned around 8 p.m. with bloodshot eyes, smelling of beer. When Nunez put J.A. to bed, she noticed that J.A.'s vaginal area and nipples looked red and swollen. J.A. told her Alcantar put his finger in her vagina again, and he "pulled her breasts." Nunez confronted Alcantar, and Alcantar yelled that J.A. was a "fucking lying bitch." But they all slept at home that night. When Nunez woke up, Alcantar had already left for work. Nunez called her sister, and then the police arrived.

14 Dr. Marjorie Fujara, medical director of CAC, testified she examined J.A. on February 23, 2012. J.A. had a normal hymen and her vulva appeared somewhat red. Dr. Fujara said the redness could result from a number of innocent causes. Dr. Fujara could neither confirm nor refute J.A.'s assertions of sexual abuse. The following exchange concluded Dr. Fujara's direct examination:

"Q *** [B]ased on your education, your training, your experience, did you come to an opinion within a reasonable degree of medical certainty as to whether

or not [J.A.'s] medical examination was consistent with her statements during her exam on February 19th of 2012?

MR. BENSON [Defense counsel]: Objection.

THE COURT: Sustained.

BY MS. CARLISLE [Prosecutor]:

Q Let me try that question again.

Based on your education, your training and experience, did you come to an opinion based on a reasonable degree of medical certainty, as to whether [J.A.'s]

medical examination was consistent, your medical examination, that was consistent with what her statement was back -

THE COURT: Sustained. That's not the proper subject of an expert witness. Sustained.

BY MS. CARLISLE:

Q Dr. Fujara, based on your education, your training and your experience, did you form an opinion with regards to your examination of [J.A.] within a reasonable degree of medical certainty that normal findings are typical with a history of sexual abuse?
MR. BENSON: Objection.

THE COURT: Sustained."

15 Dr. Levine testified many innocent acts could explain the redness Dr. Castro and Dr. Fujara saw.

16 Stevenson introduced the video recording of her February 20, 2012, interview of J.A. The jury watched and listened to the recording. The trial court also sent the recording and a transcript of the interview to the jury during deliberations.

17 The jury found Alcantar guilty of both predatory criminal sexual assault and aggravated criminal sexual abuse. The trial court denied Alcantar's posttrial motion and sentenced him to 15 years in prison for predatory criminal sexual assault and to 3 years for aggravated criminal sexual abuse, with the sentences to run consecutively. Alcantar now appeals. The record on appeal includes neither the video recording of Stevenson's 2012 interview of J.A. nor the transcript of that interview.

18 ANALYSIS

19 Alcantar first argues that the evidence does not prove him guilty beyond a reasonable doubt. When a defendant challenges the sufficiency of the evidence supporting his conviction, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). It is the province of the judge or jury as trier of fact "to determine the credibility of witnesses, to weigh the testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence." *Williams*, 193 Ill. 2d at 338. We

will not disturb a defendant's conviction on grounds of insufficient evidence unless the proof is so unreasonable, improbable, or unsatisfactory that no reasonable jury could find defendant guilty. *Williams*, 193 Ill. 2d at 338.

20 Predatory criminal sexual assault of a child occurs when an accused age 17 or older commits an act of sexual penetration against a victim under the age of 13. 720 ILCS 5/12-14.1(a)(1) (West 2004). Sexual penetration is "any contact, however slight, between the sex organ or anus of one person by the sex organ, mouth or anus of another person." 720 ILCS 5/12-12(f) (West 2004); *People v. Raymond*, 404 Ill. App. 3d 1028, 1039, (2010). Evidence of the emission of semen is not required to prove sexual penetration. 720 ILCS 5/12-12(f) (West 2004); *Raymond*, 404 Ill. App. 3d at *1039*. The statutory definition of penetration does not require physical penetration, but merely requires contact. *People v. Moore*, 199 Ill. App. 3d 747 (1990). Medical evidence is not required to sustain a conviction of criminal sexual assault. *People v. Le*, 346 Ill. App. 3d 41, 50 (2004).

21 Aggravated criminal sexual abuse occurs when a "person commits an act of sexual conduct with a victim who is under 18 years of age and the person is a family member." 720 ILCS 5/12-16(b) (West 2008); *People v. Ostrowski*, 394 Ill. App. 3d 82, 91 (2009). The Code defines "sexual conduct" as "any intentional or knowing touching or fondling by the victim or the accused [of] *** any part of the body of a child under 13 years of age, for the purpose of sexual gratification or arousal of the victim or the accused."

Ill. Rev. Stat., 1984 Supp., ch. 38, par. 12 - - 12(e); *People v. Creamer*, 143 Ill. App. 3d 64, 70 (1986). The statute defines a "family member" as" a parent, grandparent, or child, whether by whole blood, half-blood[,] or adoption and includes a step-grandparent, step-parent, or step-child." 720 ILCS 5/12-12(c) (West 2008); *People v. Stull*, 2014 IL App 4th 120704, ¶ 59.

22 In this case, the evidence, when viewed in the light most favorable to the prosecution, proved defendant guilty of predatory criminal sexual assault and aggravated criminal sexual abuse. There was no dispute at trial that defendant was over 17 years old at the time of the offenses and that J.A. was his daughter, and only five years old at the time of the offense.

23 J.A., nine years old at the time of trial, testified consistently about defendant's abuse of her when she was five years old. J.A. positively identified defendant, her father, in court as the person who inserted his finger in her vagina and touched and sucked on her breasts on two separate occasions. One time was in the bedroom of their home and the other time was when they drove Chavez home. J.A. recalled that she was sleeping in the bedroom when defendant came into the room, put a hand over her mouth and said not to say anything or he would kill her mother. Defendant then touched her "Cola" which J.A. called her vagina area. J.A. testified it hurt when defendant touched her "Cola" and it felt "ugly." J.A. remembered seeing blood on defendant's finger when he stopped touching her there. J.A. further testified defendant also put his mouth on her

"Chi-Chi," which J.A. called her breasts, and that also hurt. J.A. told her mother about what defendant had done later that evening when her mother was changing her diaper.

24 J.A. also testified that the other time defendant touched her was in a park when she went with defendant to drive Chavez home. Defendant again touched her "Cola" with his finger and her "Chi-Chi" with his mouth. J.A. admitted she did not tell her mother this time because defendant threatened to kill her mother.

25 Here, there was more than J.A.'s testimony. J.A.'s testimony was corroborated by her statements to her mother, Detective Myrna Muniz, Dr. Castro, and Stevenson. J.A. told each of these persons about defendant touching her vagina and her breasts. Based on this evidence, a reasonable jury could find defendant guilty.

26 Defendant next argues the trial court abused its discretion in denying his request for leave to issue a subpoena *duces tecum* for the medical records of J.A.'s younger sister, N.A. We will not overturn a trial court's discovery ruling unless the trial court abused its discretion and the ruling had prejudicial effect. *People v. Fairbanks*, 141 Ill. App. 3d 909, 915 (1986); *People v. Curtis*, 48 Ill. App. 3d 375, 383 (1977).

27 To justify a pre-trial subpoena, a defendant must show that (1) the documents are evidentiary and relevant, (2) the documents are not otherwise procurable reasonably in advance of trial by the exercise of due diligence, (3) the party cannot properly prepare for trial without production and

inspection in advance of trial and the failure to obtain an inspection may tend to unreasonably delay the trial, and (4) the application is made in good faith and is not intended as a general "fishing expedition." *United States v. Nixon*, 418 U.S. 683, 699-700 (1974); *People v. Shukovsky*, 128 Ill. 2d 210, 225 (1988). The decision on whether to grant a pre-trial subpoena *duces tecum* is committed to the sound discretion of the trial court since the necessity for the subpoena most often turns upon a determination of factual issues. *Nixon*, 418 U.S. at 702. Unless, the trial court's ruling is arbitrary or finds no support in the record, the reviewing court should not disturb a trial court's finding. *Id.* This court can sustain the decision of the trial court on any grounds which are called for by the record, regardless of whether the trial court relied on those grounds and regardless of whether the trial court's reasoning was correct. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 97 (1995).

28 Here, the trial court denied defendant's request for leave to issue a subpoena for medical records of N.A. to see if she was also sexually abused when she was less than a year old. The medical records had no relevance to the charges against defendant involving J.A. Based on this, the trial court did not abuse its discretion.

29 Alcantar also argues the trial court abused its discretion by limiting Dr. Levine's testimony and not allowing him to testify (1) that in his opinion "there was 'no evidence of sexual abuse' "; (2) that there were "purported inconsistencies" in statements made by J.A. and her mother; and (3) that J.A. "might have

been influenced by suggestive testing, using improper investigative techniques."

30 Motions *in limine* involve the inherent power of the trial court to admit or exclude evidence. The trial court's ruling is reviewed for an abuse of discretion. *People v. Williams*, 188 Ill. 2d 365 (1999). An abuse of discretion occurs only when a trial court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt the trial court's view. *People v. Cerda*, 2014 IL App. 1st 120484, ¶ 183.

31 "[E]videntiary motions, such as motions *in limine*, are directed to the trial court's discretion. *** [E]ven where an abuse of discretion has occurred, it will not warrant reversal of the judgment unless the record indicates *** substantial prejudice affecting the outcome of the trial." *In re Leona W.*, 228 Ill. 2d 439, 460 (2008). We find there was no substantial prejudice affecting the outcome of the trial because the evidence of Alcantar's guilt was overwhelming and supported the convictions. The trial court properly exercised its discretion in allowing Dr. Levine to testify at trial on matters that fell within the realm of expert opinion. We find no abuse of discretion here.

32 Finally, Alcantar asserts the prosecutor committed misconduct by repeated questions to Dr. Fujara after the trial court correctly sustained objections to the questions. Defendant claims the State engaged in a "pattern of misconduct" when it asked an improper question to Dr. Fujara, and attempted to rephrase the question despite sustained objections to the question. The prosecutor's

ineffective attempts to re-phrase a question to Dr. Fujara before moving on did not prejudice defendant where the witness never answered, the objections were sustained, and the jury was instructed to disregard the questions to which objections were sustained. A prosecutor's "[i]mproper remarks will not merit reversal unless they result in substantial prejudice to the defendant." *People v. Smith*, 141 Ill. 2d 40, 60 (1990). The trial court cured any error, and defendant was not prejudiced. The prosecutor's repeated questions do not warrant reversal in this case.

33 CONCLUSION

34 Accordingly, we affirm the convictions and sentences.

35 Affirmed.

APPENDIX C

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT – CRIMINAL DIVISION

No. 12-CR-05407

PEOPLE OF THE STATE OF ILLINOIS,
PLAINTIFF
v.
MIGUEL ALCANTAR, DEFENDANT

[June 13, 2014]

THE COURT: It's a 2012 case. Let me ask the defendant. How is this relevant? How is whether medical records exist that do show or don't show that Nancy's genitals or her vaginal area does or doesn't show some injury that could be deemed consistent with digital or penial presentation, how is that relevant here?
MR. BENSON: I'll tell you.
THE COURT:
Because if it does, that doesn't prove that he did it. If it doesn't, it doesn't prove that he didn't do anything to Jennifer.
MR. BENSON: It leads to an inference, and inferences are what the law, 90 percent about --
THE COURT: What's the inference?

MR. BENSON: Judge, what Jennifer says in the new statement, Jennifer says, I'm in my bed -- I'm in my mom's bed. I'm in my mom's bed. Daddy comes in. Daddy does it to me --
THE INTERPRETER: Can you speak up a little bit?
MR. BENSON: Yeah. Daddy does it to me and does it to Nancy. He puts his finger in Nancy and he puts his penis in Nancy, private to private. Mom starts to stir and he leaves. He does it to me and he does it to Nancy. If he didn't do it to Nancy, he didn't do it to her. And if there's no medical records, that is a fair inference for any lawyer to argue.
THE COURT: How old was Jennifer at the time this supposedly occurred?
MR. BENSON: Five. And there's another basis for the relevancy, your Honor, is that medical report will have a history and that history will have a statement and these statements are contradicting the statements that Jennifer has provided in the past, so it turns into classic impeachment by prior inconsistent statements.
THE COURT: By inconsistent statements by whom? By Nancy?
MR. BENSON: By the complaining witness. No. The history is going to have -- the history is going to have Jennifer telling the doctor what happened. That's what the history is going to be. There's not going to be a history of Nancy telling the doctor. The history will be Jennifer telling the doctor. And those are statements that -- I should have had these things.
THE COURT: Why would Jennifer's statements be in Nancy's medical records?
MR. BENSON: Because Nancy can't provide a

history and so Jennifer Is providing the history.
THE COURT: How do you know that?
MR. BENSON: I don't know that.
THE COURT: This is a fishing expedition.
MR. BENSON: It is not a fishing expedition.
THE COURT: Your motion is denied. It's denied. It's denied because -- Nancy was one year old at the time?
17 MR. BENSON: Probably less than that.
THE COURT: Jennifer was five years old at the time?
MR. BENSON: But Jennifer is the complaining witness, Judge.
THE COURT: Jennifer's statement that something was done to Nancy and that she perceived that some type of penetration was done to Nancy is, a, not part of the ase against Mr. Alcantar; and the claimed inference that Mr. Benson is putting forth that because there may be no physical injuries to Nancy that might be deemed consistent with some type of vaginal penetration, digital or penial , that that means it didn't happen. It doesn't mean it didn't happen. That's is not an inference that lies as matter of law. It just doesn't. This is beyond collateral. Whether Mr. Alcantar did or didn't do anything to Nancy that Jennifer did or did not perceive is simply not an issue in this case, in this now four-year-old case. I'm not going to spend time waiting for these medical records to be generated at this very, very, very late date when the request for these medical records is based on, what I got to tell you -- and I don't begrudge your well-stated arguments, but it's speculation, pure speculation.